

IN THE SUPREME COURT  
STATE OF ARIZONA

STATE FARM MUTUAL  
AUTOMOBILE INSURANCE  
COMPANY,

Plaintiff/Appellee,

v.

JACEY LEE ORLANDO,

Defendant/Appellant.

No. CV-23-0228-PR

Court of Appeals, Division One  
No. 1 CA-CV 22-0447

Maricopa County  
Superior Court  
No. CV2020-006088

---

**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S  
SUPPLEMENTAL BRIEF**

---

DAVID M. BELL (006818)  
CHRISTOPHER ROBBINS (011064)  
HILL, HALL & DECIANCIO, PLC  
3131 E. Clarendon, Suite 107  
Phoenix, AZ 85016  
(602) 889-3993

LAWRENCE A. KASTEN (020204)  
TODD FELTUS (019076)  
KORY J. KOERPERICH (034582)  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
201 East Washington Street, Suite 1200  
Phoenix, AZ 85004  
(602) 262-5311

*Attorneys for Plaintiff/Appellee  
State Farm Mutual Automobile Insurance Company*

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
INTRODUCTION .....	1
STATEMENT OF THE CASE.....	1
ISSUE PRESENTED.....	2
ARGUMENT .....	2
A.    Standard of Review.....	2
B.    The UMA’s Structure and the Relevant Terms in the Statute.....	3
C.    In Interpreting “Motorist” and “Motor Vehicle,” the Court Should Look To Related Statutes on the Same Subjects .....	4
D.    An Off-road Vehicle Used Off Road Is Not a “Motor Vehicle”.....	7
1.  The FRA.....	7
2.  Other Arizona Insurance Statutes.....	11
3.  Transportation Statutes.....	11
E.    Nothing Requires the Court to Ignore Other Statutes When Interpreting the Meaning of “Motor Vehicle” in the UMA .....	13
F.    Nothing In the UMA Indicates A Departure from the Settled Meaning of “Motor Vehicle” in Arizona.....	15
1.  While UIM Coverage Benefits a “Person,” It Still Requires an Injury Involving a “Motorist” .....	16
2.  UM and UIM Can be “Separate and Distinct” While Also Applying to the Same Kinds of Vehicles .....	19
3.  Orlando Over-reads the “Subject To” Clause.....	20
CONCLUSION.....	20

## TABLE OF AUTHORITIES

### Cases

<i>Bills v. U.S. Fidelity &amp; Guar. Co.</i> , 280 F.3d 1231 (9th Cir. 2002) .....	12
<i>Bruce v. Kelly</i> , 514 P.3d 1007 (Kan. 2022).....	5
<i>Calvert v. Farmers Ins. Co. of Arizona</i> , 144 Ariz. 291 (1985).....	13, 18
<i>Chase v. State Farm Auto. Ins. Co.</i> , 131 Ariz. 461 (App. 1982).....	10, 11
<i>Cundiff v. State Farm Mut. Auto. Ins. Co.</i> , 217 Ariz. 358 (2008).....	20
<i>Delgado v. Manor Care of Tucson AZ, LLC</i> , 242 Ariz. 309 (2017).....	2
<i>In re Drummond</i> , ___ Ariz. ___, 543 P.3d 1022 (2024) .....	5
<i>Employers Mut. Cas. Co. v. McKeon</i> , 159 Ariz. 111 (1988).....	13, 14
<i>Erlenbaugh v. U.S.</i> , 409 U.S. 239 (1972).....	9
<i>Farmer v. Killingsworth</i> , 102 Ariz. 44 (1967).....	9
<i>Franklin v. CSAA General Ins. Co.</i> , 255 Ariz. 409 (2023).....	18
<i>Frazier v. Terrill</i> , 65 Ariz. 131 (1946).....	6
<i>Glazer v. State</i> , 244 Ariz. 612 (2018).....	5

<i>Higgins v. Fireman’s Fund Ins. Co.</i> , 160 Ariz. 20 (1989).....	11, 17
<i>Lowing v. Allstate Ins. Co.</i> , 176 Ariz. 101 (1993).....	7, 13
<i>Phoenix Ins. Co. v. Rosen</i> , 949 N.E.2d 639 (Ill. 2011).....	8
<i>Planned Parenthood Arizona, Inc. v. Mayes</i> , ___ Ariz. ___, 545 P.3d 892 (2024) .....	5, 6
<i>In re Riggins</i> , ___ Ariz. ___, 544 P.3d 64 (2024) .....	5
<i>Spain v. Valley Forge Ins. Co.</i> , 152 Ariz. 189 (1986).....	8
<i>St. Paul Fire &amp; Marine Ins. Co. v. Gilmore</i> , 168 Ariz. 159 (1991).....	13, 14
<i>Stambaugh v. Killian</i> , 242 Ariz. 508 (2017).....	5
<i>State Farm Mut. Auto. Ins. Co. v. Eden</i> , 136 Ariz. 460 (1983).....	7
<i>State Farm Mut. Auto. Ins. Co. v. Wilson</i> , 162 Ariz. 251 (1989).....	7
<i>State v. Estrada</i> , 201 Ariz. 247 (2001).....	12
<i>Taylor v. Travelers Indem. Co. of Am.</i> , 198 Ariz. 310 (2000).....	17
<i>West Am. Ins. Co. v. Pirro</i> , 167 Ariz. 437 (App. 1990).....	10, 11

**Statutes**

A.R.S. § 1-213.....	7
A.R.S. § 12-341.01.....	20

A.R.S. § 20-259.01.....	<i>passim</i>
A.R.S. § 20-1631(A).....	11
A.R.S. § 28-101(3).....	12
A.R.S. § 28-101(29).....	12
A.R.S. § 28-101(56).....	12
A.R.S. § 28-101(87)(a) .....	12
A.R.S. § 28-101 <i>et. seq.</i> .....	11
A.R.S. § 28-921 <i>et. seq.</i> .....	13
A.R.S. § 28-1171(6).....	9
A.R.S. § 28-2153(D)(9) .....	9
A.R.S. § 28-2153(D)(11) .....	9
A.R.S. § 28-4001(3).....	9
A.R.S. § 28-4132(9).....	9
A.R.S. § 28-4135(A).....	9

**Other Authorities**

2 Auto. Liability Ins. 4th § 23:32.....	10
2B Sutherland Statutory Construction § 51:3 (7th ed.) .....	8
8A Couch on Ins. § 116.13 (3d ed.).....	9
9 Couch on Ins. § 122:12 (3d ed.).....	8
9 Couch on Ins. § 123:22 (3d ed.).....	10, 18
7 Am. Jur. 2d § 34 (May 2024).....	8, 17
Black’s Law Dictionary, <i>Underinsured-Motorist Coverage</i> (11th ed. 2019), <a href="https://www.merriam-webster.com/dictionary/motorist">https://www.merriam-webster.com/dictionary/motorist</a> .....	17

Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation  
of Legal Texts* 252 (2012) .....6

## INTRODUCTION

A.R.S. § 20-259.01(B) requires insurers who provide primary motor vehicle liability insurance also to offer UIM coverage.<sup>1</sup> But nothing in A.R.S. § 20-259.01 requires insurers to offer UIM coverage for injuries occurring off public roads involving an off-road vehicle.

Underinsured motorist coverage applies to accidents caused by underinsured *motorists*. That is, a person using a motor vehicle. Arizona's insurance and transportation statutes give "motor vehicle" a specific meaning, which does not include off-road vehicles when used off road. Accordingly, State Farm does not need statutory authorization to exclude UIM coverage for off-road accidents caused by off-road vehicles, because the UMA does not require State Farm to offer such coverage in the first place.

## STATEMENT OF THE CASE

Jacey Orlando was injured as a passenger in a 2014 Polaris RZR 1000 when it rolled over at the Imperial Sand Dunes in California. No other vehicle was involved and the accident did not occur on a public road.

The Polaris was designed to be used off road. Although Polaris offers a "street legal" kit, which includes turn signals, a horn, rear view mirror, and lighted license plate, this Polaris was not made street legal. (IR 23 ¶¶ 9, 11-13.)

---

<sup>1</sup> State Farm uses the same abbreviations from the petition for review.

Orlando received policy limits from the driver of the Polaris’s insurer and then sought UIM coverage under her State Farm policy. It is undisputed State Farm’s policy terms do not extend UIM coverage to off-road vehicles, unless they are being used on public roads. On a motion for summary judgment, the superior court agreed State Farm was not obligated to offer UIM coverage. The court of appeals reversed, finding that, because the UMA makes UM coverage “subject to the terms and conditions of the policy,” A.R.S. § 20-259.01(E), the absence of similar language for UIM coverage is deemed to mean insurers do not have authority to exclude off-road vehicles used off road from UIM coverage. (Op. ¶¶ 16-17.) This Court granted review.

### **ISSUE PRESENTED**

Is an insurer required to offer underinsured motorist coverage under A.R.S. § 20-259.01 for accidents that do not occur on a public road and involve a vehicle designed primarily for off-road use?

### **ARGUMENT**

#### **A. Standard of Review**

This is an appeal from an order granting summary judgment, and it concerns a question of statutory interpretation. The standard of review is de novo. *See Delgado v. Manor Care of Tucson AZ, LLC*, 242 Ariz. 309, 312 ¶ 10 (2017).

## **B. The UMA's Structure and the Relevant Terms in the Statute**

The starting point for resolution of this case is identifying which words in the statute, A.R.S. § 20-259.01, are at issue. The statute's structure is straightforward. Subsections A and B describe, respectively, an insurer's obligation to offer UM and UIM coverage. The remaining subsections, C-L, address (for the most part) issues that arise in administering subsections A and B.

For example, is an insolvent insurer an "underinsured" or "uninsured" case? That question is answered in subsection D. Is a motor vehicle uninsured or underinsured if the motorist has some insurance, but less than required under state law? That question is addressed in subsection E. Are both UM and UIM available in a particular case? That question is answered in subsections F and H. (Subsection H also addresses "stacking" more than one coverage.) How does one do the math for determining how much UIM coverage should be paid? That question is addressed in subsection G. The remaining subsections address similar specific questions or scenarios. *See* A.R.S. § 20-259.01(C) (livery and rentals); (I) & (K) (subrogation); (J) (obligations and procedures for liens); (L) (only primary motor vehicle insurance triggers obligation to offer UM/UIM coverage); (M) (insured must corroborate that unidentified motor vehicle caused accident if no physical contact).

The operative subsection here is B, which does three things. First, it defines *when* an insurer must offer UIM coverage. That is, which types of policies trigger the insurer’s obligation also to offer UIM coverage; specifically, “automobile liability” or “motor vehicle liability” policies (as opposed, for example, to homeowners’ policies). A.R.S. § 20-259.01(B) (first part of first sentence). Second, subsection B defines *what* the insurer must offer, which is “underinsured motorist coverage.” *Id.* (second part of first sentence). And, third, subsection B discusses the mechanics of the offer and some exceptions. *Id.* (remainder).

Only the second of these issues is implicated here: What is the insurer obligated to offer? And the text of the statute is terse and straightforward. The insurer must offer “underinsured *motorist* coverage.” *Id.* (Emphasis added.) That is, coverage for an injury caused by someone who is (1) underinsured, and (2) a “motorist.” The remainder of the statute, in turn, makes clear that a “motorist” is one who operates a “motor vehicle.” For example, subsection E distinguishes between UM and UIM coverage based on whether the “motor vehicle” at issue had the minimum amount of coverage required by the FRA. Similarly, subsection M contemplates an accident caused by “an unidentified motor vehicle.”

**C. In Interpreting “Motorist” and “Motor Vehicle,” the Court Should Look To Related Statutes on the Same Subjects**

Whether the Court takes a “plain meaning” approach, or determines the statute to be ambiguous, it should look to the rest of Arizona’s insurance and

transportation statutory scheme to determine the meaning of “motorist” and “motor vehicle” for UIM coverage.

This Court has recently comprehensively described the rules of statutory construction that guide its analysis. *Planned Parenthood Arizona, Inc. v. Mayes*, \_\_\_ Ariz. \_\_\_ ¶¶ 15-17, 545 P.3d 892, 897-98 (2024). The Court begins by first attempting to ascertain plain meaning and second using alternative methods of statutory interpretation if statutory language is “ambiguous,” in that “it can be reasonably read in two ways.” *Id.* at 898 ¶ 17. That does not mean, however, that examination of other statutes is limited to cases of ambiguity. Even at the first step, determining plain meaning, other statutes on the same subject—*in pari materia*—inform the meaning of a statute.

Specifically, a statute’s plain meaning is informed by “the statute’s text as a whole” as well as “statutes relating to the same subject or general purpose.” *Glazer v. State*, 244 Ariz. 612, 614 ¶ 12 (2018); *see also, e.g., In re Riggins*, \_\_\_ Ariz. \_\_\_ ¶ 12, 544 P.3d 64 (2024). In other words, a plain language interpretation “does not focus on statutory words or phrases in isolation,” but instead encompasses consideration of other related statutes for guidance. *Glazer*, 244 Ariz. at 614 ¶ 10; *see In re Drummond*, \_\_\_ Ariz. \_\_\_ ¶ 5, 543 P.3d 1022, 1025 (2024) (referring to consideration of statutes *in pari materia* as part of the plain meaning analysis); *Stambaugh v. Killian*, 242 Ariz. 508, 509 ¶ 7 (2017) (same); *see also e.g., Bruce v.*

*Kelly*, 514 P.3d 1007, 1012 (Kan. 2022) (doctrine of *in pari materia* “can provide substance and meaning to a court’s plain language interpretation of a statute”).

While some older cases indicate the *in pari materia* doctrine only applies when there is an ambiguity, *see Frazier v. Terrill*, 65 Ariz. 131, 135 (1946), this Court’s more recent cases (as cited above) take the better approach by recognizing a statute should always be interpreted in its statutory context. *Cf.* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 252 (2012) (“Statutes . . . cannot be read intelligently if the eye is closed to considerations evidenced in affiliated statutes.”) (quoting Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 539 (1947)). Indeed, this Court recently noted that a statute should be deemed ambiguous only after consideration of other statutes relating to the same subject: “‘A statute is not ambiguous merely because the parties disagree about its meaning,’ it is ambiguous if the ‘meaning is not evident after examining the statute’s text as a whole *or considering statutes relating to the same subject* or general purpose.’” *Mayes*, 545 P.2d 892, 898 ¶ 17 (2024) (emphasis added) (quoting *Glazer*, 244 Ariz. at 614 ¶ 12).

In sum, whether this Court is considering plain-meaning, or otherwise finds an ambiguity, reference to related statutes on the same subject is necessary.

#### **D. An Off-road Vehicle Used Off Road Is Not a “Motor Vehicle”**

The UIM provision of the UMA was enacted within the context of robust transportation and insurance statutory schemes that generally do not apply to off-road vehicles when operated off road. This statutory framework includes primarily the FRA, but also other Arizona insurance statutes and transportation statutes. In the context of this integrated statutory landscape, “motor vehicle” has a particular meaning that does not include an ATV operated in the sand dunes. This Court should adhere to that meaning when interpreting A.R.S. § 20-259.01(B). *See* A.R.S. § 1-213 (providing that words and phrases “which have acquired a peculiar and appropriate meaning in the law shall be construed according to such peculiar and appropriate meaning”).

##### **1. The FRA**

The FRA and UMA do not simply relate to the same subject, they are “interwoven.” *State Farm Mut. Auto. Ins. Co. v. Eden*, 136 Ariz. 460, 462 (1983). The UMA is designed to “close the gap in protection” left under the FRA. *Lowing v. Allstate Ins. Co.*, 176 Ariz. 101, 104 (1993) (quoting *Calvert v. Farmers Ins. Co. of Arizona*, 144 Ariz. 291, 294 (1985)). Its “statutory genesis” was to provide UM and UIM coverage as “gap fillers” for an insured who was injured by “a financially irresponsible or inadequately insured driver” under the FRA. *State Farm Mut. Auto Ins. Co. v. Wilson*, 162 Ariz. 251, 253-55 (1989). UIM coverage, like UM coverage, complements an insured’s liability coverage by allowing the insured to

protect himself with first-party coverage “to the same extent that he protects others from the risk of his own negligence.” *Spain v. Valley Forge Ins. Co.*, 152 Ariz. 189, 192-93 (1986).

Courts across the country agree that UM and UIM provisions “complement” and are “a necessary companion” to financial responsibility laws. *See* 9 Couch on Ins. § 122:12 (3d ed.) (“Various courts have found that UM was designed to complement the standard liability coverages.”); 7 Am. Jur. 2d § 34 (May 2024) (referring to UM and UIM laws as “a necessary companion” to financial responsibility laws). All three “serve the same underlying public policy: ensuring adequate compensation for damages and injuries sustained *in motor vehicle accidents.*” *Phoenix Ins. Co. v. Rosen*, 949 N.E.2d 639, 646 (Ill. 2011) (emphasis added).<sup>2</sup>

Because UIM coverage was adopted to fill a gap left by UM coverage and the FRA, it is both “natural and reasonable” that the meaning of “motorist” and “motor vehicle” would be “influenced” by the UM provision and the FRA. *See* 2B Sutherland Statutory Construction § 51:3 (7th ed.). Put another way, reading the statutes together in this instance is a simple “reflection of practical experience in

---

<sup>2</sup> The amicus brief of American Property Casualty Insurance Association in support of review details the history of interrelatedness echoed in cases across the nation, as well as cases holding that insurers are not required to offer UIM coverage for off-road vehicles. (Amicus at 12-18.)

the interpretation of statutes: a legislative body generally uses a particular word with consistent meaning in a given context.” *Erlenbaugh v. U.S.*, 409 U.S. 239, 243 (1972).

The FRA is redundantly clear that it does not require liability coverage for off-road vehicles when used off road. First, the FRA defines “motor vehicle” as “a self-propelled vehicle that is registered or required to be registered under the laws of this state.” A.R.S. § 28-4001(3). An ATV “operating on a dirt road” or “that is only incidentally operated or moved on a highway” is not required to be registered. A.R.S. § 28-2153(D)(9), (D)(11); *see also* A.R.S. § 28-1171(6) (classifying an ATV as an “off-highway vehicle” with separate requirements).

Second, the FRA expressly exempts from its requirements an “[a]ll-terrain vehicle or off-road recreational motor vehicle operating on a dirt road that is located in an unincorporated area of this state.” A.R.S. § 28-4132(9).

Third, the FRA prefaces that its liability coverage requirements apply only to “[a] motor vehicle that is operated on a highway in this state.” A.R.S. § 28-4135(A). Indeed, the FRA’s “primary purpose . . . is to prevent financial distress to persons involved in accidents *on the highways with uninsured motorists.*” *Farmer v. Killingsworth*, 102 Ariz. 44, 47 (1967) (emphasis added).

Simply put, an ATV is not considered a “motor vehicle” under the FRA. *See* 8A Couch on Ins. § 116.13 (3d ed.) (“All-terrain vehicles (ATVs) are typically not

required to be registered or licensed by states and are not otherwise considered to be motor vehicles within the meaning of Motor Vehicle Financial Responsibility Laws.”).

The FRA’s treatment of ATVs should bear heavy weight in how the Court interprets the UMA. This is the same recognition made in *Chase v. State Farm Automobile Insurance Company*, 131 Ariz. 461 (App. 1982) and then later in *West American Insurance Company v. Pirro*, 167 Ariz. 437 (App. 1990), which relied on the FRA to hold that an insurer is not required to offer UM coverage for off-road accidents involving off-road vehicles.

The issue now before the Court—the type of vehicle or accident that persons are required to insure against and that insurers are required to cover—is one of the most fundamental shared subject between the FRA and UMA. *Cf.* 9 Couch on Ins. § 123:22 (3d ed.) (“[A]ny coverage referring to ‘motor vehicles’ refers only to vehicles as defined in the Uninsured/Underinsured Motorist or Financial Responsibility Act of a particular jurisdiction.”). The meaning of “motorist” and “motor vehicle” is not a subject about which the FRA and UMA depart in purpose. *See* 2 Auto. Liability Ins. 4th § 23:32 (“Most courts . . . look to the financial responsibility laws and motor vehicle codes of the state to determine whether the vehicle is a motor vehicle within the meaning of the statute”).

## 2. Other Arizona Insurance Statutes

Other Arizona insurance statutes are in accord with the FRA's understanding of motor vehicles. For example, for the purpose of regulating the cancellation or nonrenewal of motor vehicle insurance, a "motor vehicle" is a "*licensed land, motor-driven vehicle.*" A.R.S. § 20-1631(A) (emphasis added). This further indicates "that the legislature's primary concern in the general area of automobile insurance was the protection of motorists using the public highways." *Chase*, 131 Ariz. at 467-68.

Similarly, it appears to be undisputed that the corresponding UM provision does not require insurers to offer coverage for off-road vehicles when used off road. *See Chase*, 131 Ariz. at 468; *Pirro*, 167 Ariz. at 438. For over forty years, Arizona law has held just that. *See Chase*, 131 Ariz. at 468. Courts have also long recognized that "the same public policy considerations apply to underinsured motorist coverage as to uninsured motorist coverage." *Higgins v. Fireman's Fund Ins. Co.*, 160 Ariz. 20, 22 (1989). Notably, the Legislature has amended the UMA more than a dozen times since *Chase* was decided, including to address court decisions, but has never undone the reasoning of *Chase* or *Pirro*.

## 3. Transportation Statutes

Other non-insurance Arizona transportation statutes also are in accord – an ATV is not a "motor vehicle" when used off road. Those statutes, *see* A.R.S. § 28-101 *et. seq.*, engage in extensive line-drawing about which vehicles are regulated

under Arizona law. A “Motor vehicle” is “a self-propelled vehicle.” A.R.S. § 28-101(29). To be considered a “Vehicle,” however, the device must be one “on or by which a person or property is or may be transported or drawn *on a public highway.*” A.R.S. § 28-101(87)(a) (emphasis added). In contrast, an “Off-road recreational motor vehicle,” is “a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway.” A.R.S. § 28-101(56). Similarly, an “all-terrain vehicle” can include motor vehicles as well as recreational off-highway vehicles when either satisfies certain enumerated conditions. A.R.S. § 28-101(3).<sup>3</sup>

Orlando has argued that the definition of “vehicle” in A.R.S. § 28-101(87)(a) includes ATVs because the statute includes devices that “may be transported” on highways. But the use of “may” does not contemplate illegal use of public highways. *See State v. Estrada*, 201 Ariz. 247, 251 ¶ 16 (2001) (“[W]e interpret and apply statutory language in a way that will avoid an untenable or irrational result.”). The use of “is or may be transported” necessarily means that a vehicle is registered for legal use on Arizona’s roads. At a minimum, the vehicle must meet the equipment requirements for a vehicle to be driven on a highway, if

---

<sup>3</sup> The Ninth Circuit in *Bills v. U.S. Fidelity & Guar. Co.*, 280 F.3d 1231, 1235 (9th Cir. 2002) purported to adopt the definition from A.R.S. § 28-101(29) but overlooked that the definitions of “vehicle” and “off-road recreational motor vehicle” modify the “simple” definition of “motor vehicle.”

not actually registered for such use. *See* A.R.S. § 28-921 *et. seq.* It is undisputed that the Polaris at issue here was not so equipped. (IR 23 ¶¶ 9, 11-13.)

**E. Nothing Requires the Court to Ignore Other Statutes When Interpreting the Meaning of “Motor Vehicle” in the UMA**

Orlando urges the Court to ignore the FRA, relying on *dicta* from *Gilmore* and *McKeon*. (Resp. to Pet. at 10-11.) Orlando’s reliance on those cases is misplaced for multiple reasons.

First, the meaning of “motor vehicle” is a shared subject between the acts. Even *Gilmore* and *McKeon* recognized that the FRA and UMA share the subject of “motor vehicle liability policies,” which is the threshold for reading statutes *in pari materia*. *See St. Paul Fire & Marine Ins. Co. v. Gilmore*, 168 Ariz. 159, 164 n.6 (1991) (quoting *Employers Mut. Cas. Co. v. McKeon*, 159 Ariz. 111, 114 (1988)).

Second, this Court has recognized the interwovenness of the FRA and UMA both before and after *Gilmore*. *See Calvert*, 144 Ariz. at 296 (citing *Chase* with approval); *see also Lowing*, 176 Ariz. at 104 (citing *Calvert* to say the UMA is meant to “close the gap in protection” under the FRA).

Third, any criticism of reading the FRA and UMA *in pari materia* was *dicta* and is unpersuasive here. Both *Gilmore* and *McKeon* rejected unnatural readings of the UMA based on express distinctions in textual purpose and meaning. *See Gilmore*, 168 Ariz. at 164-66 (relying on statutory text in both the FRA and UMA indicating that an “automobile liability” or “motor vehicle liability” policy

included policies other than the minimum liability coverage required by FRA); *McKeon*, 159 Ariz. at 113-15 (declining to “carry over” statutory authorization for named driver exclusion from the FRA to the UMA because the acts departed in purpose on the subject at issue). It was unnecessary to their holdings to criticize reading the FRA and UMA *in pari materia* in other instances.

Fourth, and relatedly, the questions addressed in the cases were materially different from the question here. *Gilmore* did not concern (as this case does) *what* coverage must be offered. It addressed the threshold question *when* coverage must be offered – specifically what type of policy triggers the obligation to offer UM/UIM coverage. *See Gilmore*, 168 Ariz. at 161. Similarly, *McKeon* addressed only whether an insurer’s right under the FRA to exclude a driver silently carries forward into the UMA and blocks the driver from UM coverage *even where* an insurer admits the driver is insured under the policy qualifying for UM coverage. 159 Ariz. at 114. Neither addressed the more fundamental question of what uninsured or underinsured “motorist” coverage actually covers, as to which there is no reason to expect the Legislature meant to have different answers.

Put simply, unlike *Gilmore* and *McKeon*, there is no difference in text or purpose between the FRA and UMA that would result in “motor vehicle” meaning something different under each act. Indeed, Orlando’s analysis offers no guidance at all to courts considering what types of vehicles the UMA covers. Nor does

Orlando explain why the Legislature would have extended UIM, but not UM, coverage to vehicles that need not be insured in the first place and which are not necessarily “motor vehicles” for other insurance purposes. Surely, had the Legislature intended such a significant departure from the FRA, it would have provided some clue in the UMA, rather than silently expecting that “motor vehicle” and “motorist” would be understood to include accidents caused by non-street legal, non-licensed ATV’s used in the sand dunes, for which liability insurance is not required.

**F. Nothing In the UMA Indicates A Departure from the Settled Meaning of “Motor Vehicle” in Arizona**

The Court should attribute the meaning of “motorist” and “motor vehicle” to the UIM provision that is found elsewhere in Arizona law. Yet Orlando proposes a contrary and unnatural reading of the UMA’s requirements based primarily on three phrases in the UMA: (1) the reference to UIM including “coverage for a person,” A.R.S. § 20-259.01(G); (2) that UM and UIM coverages are “separate and distinct and apply to different accident situations,” A.R.S. § 20-259.01(H); and (3) the use of “subject to the terms and conditions” for UM coverage but not UIM coverage, A.R.S. §§ 20-259.01(D), 20-259.01(E). None of these arguments answer what a “motor vehicle” or “motorist” is under the UMA or why it should be different than elsewhere in Arizona law.

Instead, Orlando simply assumes that the UMA requires insurers to offer UIM coverage for an off-road accident in an off-road vehicle. But common-sense dictates that if the Legislature were fundamentally to depart from the subject matter being regulated, it would do so affirmatively and expressly. It certainly would not do so in any of the three strained ways Orlando proposes.

1. While UIM Coverage Benefits a “Person,” It Still Requires an Injury Involving a “Motorist”

Orlando advocates for UIM coverage untethered to any motor vehicle accident. (Resp. to Pet at 11 (arguing “the definition of a ‘motor vehicle’ is immaterial”).) Orlando argues that “underinsured motorist coverage” is for “a person” and that “[t]he phrase ‘motor vehicle’ does not appear anywhere within the definition of coverage that must be offered to insureds.” (Resp to Pet. at 11-12.)

As an initial matter, the subsection on which Orlando relies, A.R.S. § 20-259.01(G), has a distinct purpose that has nothing to do with this case. It is simply designed to provide the formula for calculating *how much* UIM money an insurer has to pay; specifically, liability policy limits minus the sum of all of a person’s applicable insurance. There is nothing to suggest the Legislature intended, solely by use of the word “person” in a subsection about math, to expand “underinsured motorist coverage” to all-perils insurance.

Indeed, while it is true that UIM coverage is personal and portable, that does not mean it covers all risks. It covers only injuries to the insured that are caused by

a “motorist” who has insufficient insurance on the motor vehicle that caused the injury. This is made clear by the very name of the coverage that must be offered – “underinsured motorist coverage.” A.R.S. § 20-259.01(B). Orlando’s proposed interpretation of UIM requirements fails to provide any limiting principle for when UIM coverage applies. Were Orlando correct, UIM coverage would apply to any situation where a person is injured by another person who had liability insurance. That is decidedly not underinsured *motorist* coverage. *See, e.g.,* 7 Am. Jur. 2d Automobile Insurance § 34 (May 2024) (recognizing that UIM coverage provides insurance for those “who have been bodily injured by a negligent motorist” and is not “an all-risk insurance designed to provide coverage for all injuries incurred”).

The word *motorist* is in the name of the coverage and must mean something. It means underinsured motorist coverage “provides indemnification when a negligent *motorist* is inadequately insured.” *Taylor v. Travelers Indem. Co. of America*, 198 Ariz. 310, 316 ¶ 16 (2000) (emphasis added); *see also Higgins*, 160 Ariz. at 22 (referring to entitlement to UIM coverage arising when “offending driver” is underinsured); Black’s Law Dictionary, *Underinsured-Motorist Coverage*, (11th ed. 2019) (“Insurance that pays for the insured’s losses and injuries negligently caused by a driver who does not have enough liability insurance to cover the damages.”). A motorist is “a person who travels by automobile.” <https://www.merriam-webster.com/dictionary/motorist>.

Orlando’s argument also ignores the context in which an insurer must offer UIM coverage, which is in a policy providing “primary motor vehicle insurance.” A.R.S. § 20-259.01(L). For example, subsection L twice expressly limits the coverage requirements to policies that insure a “motor vehicle.” A.R.S. § 20-259.01(L). Given that the UMA’s purpose is to offer reciprocal first-party coverage to the insured, it is natural that UIM coverage would also be limited to insuring against the risk of motor vehicle accidents.

Additionally, this Court recently rejected an attempt to overread the UMA’s reference to “persons,” while clarifying that it “simply illustrates the general understanding that UIM coverage applies for the benefit of ‘persons.’” *Franklin v. CSAA General Ins. Co.*, 255 Ariz. 409 ¶ 16 (2023). Accordingly, although UIM coverage is “portable,” and an injured person may be “on foot,” or “on a bicycle,” or “sitting on a porch” when injured, the injury must still involve a motor vehicle to trigger UIM coverage. *Calvert*, 144 Ariz. at 297. Moreover, if “the specific vehicle at issue is not provided for in the statute, an accident involving that vehicle will not trigger [UM or UIM] coverage.” 9 Couch on Ins. § 123:22 (3d ed.). Were it otherwise, UIM coverage would amount to all-risk insurance for any peril a person may face in the world, rather than the risk of an underinsured *motorist*.

2. UM and UIM Can be “Separate and Distinct” While Also Applying to the Same Kinds of Vehicles

A.R.S. § 20-259.01(H) recognizes that UM and UIM coverages “are separate and distinct and apply to different accident situations.” But this does not mean that insurers are required to cover entirely different categories of vehicles under subsection A (UM) than subsection B (UIM). It simply means that a motor vehicle cannot be both “uninsured” and “underinsured” as it relates to a single accident. Subsection H addresses an insured’s attempt to recover under both UM and UIM coverages (or multiple policies) for a single accident, making explicit that it is prohibited. A.R.S. § 20-259.01(H).

Moreover, UM and UIM coverages “are separate and distinct and apply to different accident situations” based on the liability insurance available from the at-fault motorist, *not* what he is driving. Put another way, the distinguishing factor between whether UM or UIM coverage applies to a particular accident is not the type of vehicle being driven; instead, the analysis turns on what insurance proceeds are available to recover from the at-fault motorist. For example, subsection D explains that a motor vehicle insured by an insolvent insurer is considered uninsured rather than underinsured. Subsections E and G, read together, also explain that UM coverage applies when a motor vehicle is not insured with the minimum requirements of the FRA, while UIM coverage applies when there is at least minimum liability insurance available but it is not enough to cover the actual

damages. Again, the distinction between UM and UIM coverage relates to the insurance status of the at-fault motorist, not the kind of vehicle he was driving.

3. Orlando Over-reads the “Subject To” Clause.

The petition for review addresses the various flaws in Orlando’s argument that relies on *Cundiff v. State Farm Mutual Automobile Insurance Company*, 217 Ariz. 358 (2008) and the UM provision’s use of “subject to the terms and conditions” of the coverage. State Farm will not repeat those arguments here. (Pet. at 11-15.) It is important to note, however, that even accepting that insurers are given broader latitude to write policy exceptions for UM coverage than UIM coverage, that has no bearing on the threshold issue of whether an insurer is required to offer UIM coverage for accidents involving ATVs used off road. The Court should reject Orlando’s attempt to turn a shield intended for insurers offering UM coverage into a sword against insurers in the context of UIM coverage.

### CONCLUSION

The Court should reverse the Court of Appeals’ decision on summary judgment and affirm the superior court’s grant of summary judgment in favor of State Farm.<sup>4</sup>

---

<sup>4</sup> State Farm requests an award of attorney fees under A.R.S. § 12-341.01.

RESPECTFULLY SUBMITTED this 14th day of June, 2024.

LEWIS ROCA ROTHGERBER  
CHRISTIE LLP

HILL, HALL & DECIANCIO, PLC  
David M. Bell (006818)  
David@hhdllawfirm.com  
Christopher Robbins (011064)  
Chris@hhdllawfirm.com  
3131 E. Clarendon, Suite 107  
Phoenix, AZ 85016  
David@hhdllawfirm.com  
Tel.: 602.889.3993

By: /s/ Lawrence A. Kasten

Lawrence A. Kasten (020204)  
LKasten@lewisroca.com  
Todd Feltus (019076)  
TFeltus@lewisroca.com  
Kory J. Koerperich (034582)  
KKoerperich@lewisroca.com  
201 East Washington Street, Suite 1200  
Phoenix, AZ 85004  
Tel.: 602.262.5311

*Co-Counsel for Plaintiff/Appellee State  
Farm Mut. Auto Ins. Co.*